IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1311 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NANIKRAM SHHIJUMAL MULCHANDANI
Versus
MINOR DHARMENDRA

Appearance:
1. First Appeal No. 1311 of 1984
MR MD PANDYA for Petitioner No. 1-2
MR SANDIP C SHAH for Respondent No. 1
MR CHANDRAKANT SHAH for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE K.M.MEHTA

Date of decision: 26-27/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.M.MEHTA)

1. Nanikram Shhijumal - appellant No.1 and the National Insurance Co.Ltd - appellant No.2, appellants (original opponents) have filed this First Appeal under Section 110-D of the Motor Vehicles Act against the judgment and award dated 18th August, 1983, passed by the Motor Accident Claims Tribunal, Ahmedabad, in M.A.C.Petition No.152 of 1982. The tribunal by its impugned judgment and award has awarded Rs.3,47,700/- with running interest at the rate of 6% p.a. as compensation to minor Dharmendra original petitioner before the tribunal.

2. The facts giving rise to this appeal are as under:-

2.1 Minor Dharmendra - original petitioner (respondent No.1 herein) was a minor aged 13 years old. He was studying in Standard VII in the Central School at the relevant time. On 10th of March, 1982, at about 1.45 p.m., the petitioner was passing on the Asarwa Chakla road and he went to a public urinal situated on the footpath of the road. As it was engaged, he was standing outside with two other persons. This urinal is situated opposite Asarwa Municipal School No.4. At that time Siddikbhai Khamisabhai - original opponent No.1 (opponent No.2 in Appeal) came driving the Motor Truck No.GTX 8080 from New Shorrock Mill side in full speed and on the wrong side. He was driving rashly and negligently. He knocked down the petitioner and one another person by the front light side bumper of the truck. The petitioner fell down and his left leg was completely crushed by the front right hand side wheel. The petitioner was severally injured on his left leg and penis, and other parts of the body. The truck thereafter dashed with the urinal and also injured other persons who were at that time in the urinal and thereafter the driver sped away with the truck. Thereafter the petitioner was removed to Civil Hospital. On that very day his left leg was amputated, his right knees hip, penis and other parts were also injured and left side testical was avulsed. The pelvis bone was also fractured and the urethra was injured and catheter had to be inserted. On 24th March, 1982, skin grafting operation was carried out on left leg and he was discharged from the hospital on 27th April, 1982, but he was still not completely cured and he was advised to dress the wound regularly and to come to hospital periodically for further follow up treatment. At that time also the injury at a urethra was not healed and it was not possible for the petitioner to pass urine

in natural way. Even after being discharged from the hospital, the petitioner was completely bed ridden and one compounder was coming daily for dressing and was dressing the injured parts of the body and in between the petitioner visited civil hospital thrice. The leg injury healed but the injury caused to the urethra was not healed. So the petitioner was admitted in private hospital of Dr.P.C.Patel on 21.6.1982 and he was operated upon. At that time also catheter tube was inserted in the urethra and skin grafting operation was also performed. He was discharged after nine days and after four days, thereafter the sutures were removed, the petitioner is still unable to pass urine properly and he experiences burning pain and he is likely to loss his virility.

2.2 It was further contended by the petitioner in the claim petition regarding his basic education and qualification that he had completed basic course of the Rifle shooting conducted by the Ahmedabad Military and Rifle Association with distinction at the young age of 10 years. Thereafter in that very year he had obtained first place in Air Rifle shooting competition organised by the said association. Thereafter he had secured first place at Inter School Level Competition held in the year 1979 and thereafter he represented Gujarat State in the All India Shooting Competition held at Chandigarh in the year 1980. He had broken the National Record and had secured two silver medals. Thereafter he represented Gujarat State in the competition held at Kolhapur in the year 1981 and secured second place. He had also participated in Silver Jubilee National Shooting Championship held at Ahmedabad in the year 1982 and he again broke the National record and secured first place and gold medal. He was awarded General Vikramsing Trophy by the National Rifle Association of India. He had also participated in two coaching camps conducted by two international experts Mr.Auto Charbour and Mr.Franke Brigs and he was likely to be invited to participate in Asiad Games which were to be held at New Delhi in the year 1982.

2.3 It was his contention that because of this unfortunate accident he could not participate and his brilliant and promising sporting career is ruined and the petitioner has suffered severe shock and his completely broke. The petitioner has lost one limb and because of this and other likely complications his marital prospect are also likely to suffer. This shows that the petitioner had a very brilliant and bright future in this behalf which was completely destroyed.

2.4 In view of the aforesaid circumstances in the claim petition the petitioner contended that the petitioner had suffered acute physical and mental pain and torture. The petitioner had to spend about Rs.10,000/- on medicines, transport and other special diet. The petitioner has to walk with the aid of crutches and so the petitioner has to go to school and other places in rickshaw. The petitioner will have to continue to spend on transport for the rest of his life, as his left leg has been amputated near the limb and it is not possible to fix artificial limb. But even if it is possible the petitioner will have to spend about Rs.15,000/- for that purpose. The father of the petitioner was staying at the first floor the rent was only Rs.15/- per month, but as the petitioner is unable to climb the stairs, the petitioner's father had to occupy another house on the ground floor at the monthly rent of Rs.140/-. During hospitalisation and thereafter also the petitioner needed continuous attendance of his father and mother and the petitioner will also require such assistance for long time. Father of the petitioner had to take four months' leave and his monthly salary is Rs.1200/- per month. So the petitioner has claimed Rs.4,50,000/- in all under various heads as stated in the petition.

2.5 The opponent No.1 was driving the Motor Truck No.GTX 8080 involved in the accident at the relevant time and he was in the employment of the opponent No.2 Shri Nanikram S.Mulchandani (appellant No.1 in appeal) who is the owner of the motor truck. The said truck was insured with the original opponent no.3 the National Insurance Company Limited (appellant No.2 in Appeal) and so all the three opponents are jointly and severally liable for the claim of the petitioner.

2.6 In the claim petition, the original opponents No.1 and 2 have filed written statement at Exh.13 and have raised the following contentions. It was their contention that the said accident was purely an accident and it was not caused because of the rash and negligent driving of the opponent No.1. They have denied the contention of the petitioner regarding injuries and damages. It was admitted that the truck was properly insured with the National Insurance Company Limited, Rajkot. The date, time and place of the accident are admitted but it is not admitted that it was caused because the opponent no.1 was driving the truck on his wrong side of the road rashly and negligently. It is also not admitted that the petitioner and other persons

were knocked down by the truck and that the petitioner was run over under the wheel of the truck.

2.7 It was contended that the opponent no.1 was driving the truck on his correct side of the road in slow speed and suddenly one small boy came running on the road and started crossing the road from near the truck and to save him the opponent no.1 had suddenly applied the brakes and he had turned the truck towards right side. At that time the petitioner was standing on the road completely inattentive to the road traffic and in violation of the traffic rules and he was lightly dashed by the rear side of the said truck. It was their contention that this was purely an accident and the opponents are not liable for the claim of the petitioner.

2.8 The opponent No.3 - Insurance Company also filed written statement at Exh.82 and has raised contention that the accident is not within the knowledge of the insurance company and so the same is not admitted. However, opponent No.3 admitted that the opponent No.1 was holding valid driving licence. However, insurance company has denied other contentions in this behalf. It was also stated that the claim is excessive.

2.9 Before the tribunal, on behalf of the claimants petitioner Dharmendra was examined at Ex.56. He has narrated how the injury caused to him in this behalf in detail. He also stated that about his bright future prospects in this behalf. The claimants have also examined Manubhai Narottamdas Nayak at Exh.60 father of Dharmendra who was also serving in the Municipal Corporation. He stated about future prospects of his son Dharmendra and the injury caused to minor Dharmendra at that time. One eye-witness Murlikumar Jayrambhai Vyas was also examined at Exh.63 who was also standing near the urinal. He has deposed that the truck was driving rashly and negligently. One Laxmanbhai Kalaji was examined at Exh.68 who was also standing near the urinal at the relevant time. He also deposed that the truck was driving rashly and negligently. Other witnesses Pravinbhai Chaturbhai Patel at Exh.71 has been examined. He has deposed that the injury caused to minor Dharmendra. One Dr.Nandkishor Ramanlal Parikh was also examined at Exh.75 regarding disability caused to minor Dharmendra. One Keshav Govind Prabhu at Exh.77 was also examined. He has deposed that he was associated in Rifle Training Programme and he has narrated about the bright future of Dharmendra in this behalf.

2.10 On behalf of opponents, driver Siddikbhai

Khamisabhai was examined at Exh.83. He has deposed that he was driving the truck on the correct side of the road and at that time one boy suddenly came from the left side foothpath and so he had applied the brakes and turned his truck towards his right and the boy was saved. Over and above the claimants have also produced the necessary documentary evidence in this behalf.

2.11 The Tribunal after considering the oral and documentary evidence held that the claimant sustained injury on account of rash and negligent driving of the Motor Truck No.GTX 8080 by opponent no.1. The tribunal has awarded compensation as follows:

Rs.10,000/-	For medicines, medical charges, special diet and transport charges.
Rs.12,000/-	For future transport charges.
Rs.10,000/-	For loss of wages of father of the petitioner and nursing charges.
Rs.75,000/-	For pain, shock and suffering and for loss of amenities and other pleasures of life.
Rs.2,40,000/-	For future economic loss.
Rs.3,47,800/-	in all.

3. It may be noted that the other claimant Laxmanbhai Kalaji Thakore had also filed Claim Petition No.124 of 1982 arising out of the said accident. The tribunal has decided both the claim petition by common judgment. However, the insurance company has filed appeal only against Claim Petition No.152 of 1982 filed by minor Dharmendra, therefore we are not discussing the same in present proceedings.

4. Ms.Maya Desai, learned advocate on behalf of Mr.M.D.Pandya, learned Senior Advocate, appeared on behalf of the appellants - original opponents No.2 and 3 has submitted that so far as negligency is concerned the tribunal has erred in not properly appreciating the oral and documentary evidence on record. She further submitted that the tribunal has erred in holding that the petitioner-claimant sustained injuries on account of rash and negligent driving of the Motor Truck No.GTX 8080 by

opponent No.1 the driver.

4.1 She has relied upon Ex.46 panchnama and other documentary evidence also in this behalf.

4.2 As regards quantum of compensation, learned advocate submitted that as regards amount awarded towards pain, shock and sufferings which has been given Rs.75,000/-, the tribunal has awarded very high amount particularly looking to the nature of the injury sustained by minor Dharmendra. Learned advocate submitted that the tribunal ought to have given lesser amount in this head of compensation.

4.3 Learned advocate further submitted that, as regards future economic loss, the tribunal has awarded Rs.2,40,000/- that amount is also a very high amount awarded by the tribunal. She submitted that the tribunal has erred in awarding Rs.1000/- per month regarding future economic loss of minor Dharmendra and also applied multiplier of 20 and thereby erred in awarding Rs.2,40,000/- for future economic loss.

Regarding Negligence:

5. In this case, from the facts stated in the claim petition and the evidence on record, the petitioner was standing near the public latrine situated on the footpath of the north-south road running from Asarwa Chakla to New Shorrock Mill. At that time the opponent No.1 came from New Shorrock Mill driving the Motor Truck No.GTX - 8080 in full speed and driving rashly and negligently and on the wrong side. The truck driver also dashed the truck with the urinal and as a result the urinal was demolished. Thereafter the truck driver ran away with the truck. The bricks of the urinal fell on the petitioner and he was severally injured and he sustained compound fracture of Tibia and Fibula bones of the left leg and received injuries on other parts of the body also. So the petitioner sustained permanent disability in this behalf.

6. Learned advocate for the original claimants respondent herein has relied upon Panchnama Ex.46. From the panchnama it appears that the width of the road was 24 feet. The urinal was situated on the east of the road on the footpath side. The urinal was completely broken. There was no brake marks of the truck in question.

7. We have also considered the oral evidence of Dharmendra Manubhai Nayak Ex.56 and also other oral

evidence of Murlikumar Jayrambhai Vyas Ex.63 who was present at the time of accident and one Laxmanbhai Kalaji Ex.68 who was also present at the time of accident. In view of the oral evidence as well as documentary evidence and the nature of injury sustained on minor Dharmendra, in our view, when the truck came from New Shorrock Mill side and knocked down the minor Dharmendra and his left leg was run over by the front right hand side wheel of the truck and thereafter the truck collided with the urinal was completely demolished and thereafter the truck ran away towards Asarwa Chakla. This fact clearly shows that the truck driver was rashly and negligently driving the truck and accident occurred because of his sheer negligence in this behalf. The truck driver has not taken any due care and caution in driving the truck. In view of the same the truck driver was completely negligent in driving the truck and the minor Dharmendra sustained injury on account of rash and negligent driving of the Motor Truck No.GTX 8080 by opponent No.1.

Our Conclusion regarding negligency:

8. We have considered the documentary evidence as well as oral evidence of Dharmendra, his father and medical evidence. We have also considered the various decisions cited by the learned advocate for the appellants and respondents in this behalf. Looking to the injury suffered by minor Dharmendra which has been supported by medical evidence and also panchnama on record, we are of the view that the petitioner sustained injury on account of rash and negligent driving of Motor Truck No.GTX 8080. In view of the fact that urinal was completely demolished and debris was lying scattered on the road and that damage caused to the urinal was assessed at Rs.1000/-. The petitioners have also produced photographs at Exh.54. This also supports the contention of the claimant that urinal was completely demolished and the bricks and other materials were lying scattered on the road. In our view the road was 23 feet wide and it was imperative for the driver to take sufficient care so as not to injure anybody when driving and this would have required to drive very slowly in this behalf. From the evidence on record, it is clearly established that the driver of the Motor Truck was driving the truck in speed and on the wrong side. Applying the res ipsa loquitur and in light of the documentary evidence as well as oral evidence it is clear that accident was caused by the opponent No.1 who was driving the Motor Truck No.GTX 8080 in a rash and negligent manner.

8.1 We have now to consider whether maxim of res ipsa loquitur can apply in this case? In view of this peculiar facts and circumstances of the case for which we have considered, in our view maxim of res ipsa loquitur clearly applies in this case and truck driver was negligent in driving the truck. This maxim applies to cases where the peculiar circumstances constituting the event or accident proclaim that the negligence of somebody is the cause of the event or accident. In this case event or accident has happened is a kind of things if those who have management and control use due care; secondly, the claimants have also shown that the event or thing which caused the accident was within the driver control.

Regarding Compensation.

9. In this behalf, we have considered the contention raised by the claimants and the oral evidence as well as medical evidence led by the parties. Admittedly both the petitioners were removed to the civil hospital immediately after the accident and they were treated as the indoor patient. As per the medical certificate Exh.25 issued by civil hospital which has been produced by the claimants. It has been stated that the petitioner minor Dharmendra was admitted on 10.3.82 and he was discharged on 27.3.82. The following injuries has been stated in the said certificate.

1. Left lower limb is crushed, more from inquinal ligament to the knee joint, skin loss of thigh on its medial and anterior aspect. Completely and partial on the lateral aspect. There is crushing of muscles & vessels of (L) thigh. There is avulsion of (L) testis, completely and of penis partially. There is fracture of (L) temur with stimp projecting outside.

2. C.L.W. (R) parital region 1" x 1/4" scalp deep fresh.

3. C.L.W. (L) parital region 1" x 1/2" scalp deed fresh.

4. Abrasion (L) elbow 1" x 1".

9.1 After the said certificate, follow up action was also been done for which further medical certificate has

been produced by the claimants at Ex.26 in this behalf.

9.2 It has been contended by original claimants that petitioner was born in the year 1968 and the accident occurred in the year 1982. That shows that he was aged about 14 years old at the time of accident to show that the claimant had a very bright future. The claimants have produced certificate from Kendriya Vidyalaya (Central School) at Exh.27 to show that he was regular N.C.C. cadet of Air Wing of this School Troop No.7. He was very active in pareds and shooting. He appeared for the 'A' certificate examination of N.C.C. in the month of March 1982. He has also produced the certificate of the Ahmedabad Military & Rifle Training Association at Exh.28 in which it was stated that minor Dharmendra Manubhai Nayak has successfully completed basic course in 177 Co2 Air Rifle Shooting with distinction in the examination held by the Association in the year 1978. He has also produced certificate of the Ahmedabad Military & Rifle Training Association at Exh.29 to show that Dharmendra Naik has achieved First A group rank in the Independency Shooting Competition in the year 1978. Similarly he has also produced certificate issued by the Ahmedabad Military & Rifle Training Association at Exh.30 to show that he has taken part in Inter-School Shooting Competition held in the year 1979. He has also produced certificate of merit issued by the Ahmedabad Military & Rifle Training Association to show that he stood first rank in the sub-junior group inter school shooting competition held in December 1979. He has also produced Special Certificate of Merit issued by National Rifle Association of India at Ex.32 to show that he had awarded special prize in the Air Rifle CLS.UB-Junior and stood second place in the said event held in the N.S.C.C. at Chandigarh in March 1980. He has also produced certificate issued by National Rifle Association of India at Ex.33 to show that he has awarded Special Prize in the Match No.45 .177 Air Rifle (ISU) Sub-Junior and stood second place in the shooting competition held at Kolhapur in the month of January 1981. He has also produced paper cutting of Newspaper "Prabhat" dated 14.4.80 to show that he has obtained championship at the National Level Shooting Competition and has awarded gold medal in the said competition. Regarding injury also the claimants have produced press cutting of Newspaper "Gujarat Samachar", "Jansatta", "Sandesh" and other newspapers.

9.3 All these certificates go to show that the young boy aged about 14 years has a very shinning and promising career. The claimants have also relied upon oral evidence of claimant himself, father of the claimant,

medical certificates and other evidence to substantiate his claim regarding injury and the damages.

9.4 It was submitted that petitioner has lost his left leg and he is walking with the aid of crutches. Formerly he was going to Central School in Municipal Transport Bus but because of his injury now he used to go by a rickshaw. For that he has claimed Rs.100/- p.m. in this behalf. The claimants have claimed the said amount for 15 years and multiplier of 15 would apply, the tribunal has awarded Rs.100/- p.m. for 10 years and thereby awarded Rs.12,000/- on that account.

10. As regards medical expenses, looking to the injury sustained by the petitioner where the father of the claimant has stated that he has taken a loan of Rs.5,000/- from the Employees Credit Society and he has to pay interest at the rate of 9% and the loan is being repaid by the monthly instalment of Rs.200/-, and looking to the injury the claimants claimed Rs.10,000/- for medical expenses, medical treatment, special diet for which the tribunal has awarded Rs.10,000/- for medical expenses. We are of the view that looking to the injury sustained by the claimant, the tribunal awarded Rs.10,000/- towards medical expenses is quite precisely legal and valid.

10.1 As regards transportation charges also the tribunal has awarded Rs.12,000/- is also perfectly legal and proper towards future transportation charges.

11. The father of the claimant also deposed that he was serving in the Municipal Corporation in the Octroi Department. He had taken four months leave and he had also taken a loan regarding expenses to be paid for that the claimants have claimed Rs.10,000/- for loss of wages of father and nursing charges in this behalf. Looking to the evidence adduced by the claimant we find the same is quite accurate, legal and valid in this behalf.

12. As regards compensation for pain, shock and suffering, the tribunal has awarded Rs.75,000/- in this behalf. The Tribunal has relied upon oral evidence of minor Dharmendra, his father and also medical evidence of Dr.P.C.Patel. The tribunal has considered that the injuries sustained by minor Dharmendra and consequent disability sustained by him are much more serious and of far reaching consequences than that suffered by Bharat Premji and therefore the tribunal has awarded Rs.75,000/towards pain, shock and sufferings and for loss of other amenities and future pleasures of life.

13. Learned advocate for the appellants has seriously assailed the said findings of the tribunal in this behalf. She submitted that the tribunal has clearly awarded very excessive amount on this head.

13.1 In support of her contention, she has stated that the tribunal has relied upon the Division Bench judgment of this Court in the case of of A.S.Rajara @ Raja Vamshyam vs. Joitaram Rawabhai Patel and another reported in 1982(2) Vol.23 GLR 29. In this connection learned advocate submitted that in that case injury which has been sustained was very severe which has been referred in para 5 of the said judgment whereas injury sustained in the present case is less and therefore the tribunal ought not to have granted amount of Rs.75,000/towards pain, shock and sufferings in this behalf.

13.2 The learned counsel for the appellants further submitted that the tribunal has also not properly considered the judgment of this Court in the case of Ashish Jivrajbhai vs. Ashwinbhai Himatlal and others reported in 1982(2) Vol.23 GLR 290. In that case also the nature of injury was very serious and however inspite of that in that case the tribunal has awarded only Rs.30,000/- towards pain, shock and sufferings, whereas, in the present case the tribunal has awarded Rs.75,000/- towards this head is much higher side in this behalf.

13.3 The learned counsel has also relied upon another judgment of this Court in the case of Ahmedabad Municipal Corporation vs. Niranjan Ambalal Patel and others reported in 1982(2) Vol.23 GLR 180.

13.4 Learned advocate for the appellants submitted that as regards future income, the tribunal has awarded Rs.1000/- p.m. future economic loss to the minor Dharmendra is also on higher side. She submitted that in any view of the matter when the tribunal has applied multiplier of 20 for awarding future economic loss to a boy of 14 years, the tribunal ought not to have applied multiplier of 20 but ought to have applied multiplier 15 in this behalf.

13.5 In support of the said contention, she has relied upon the Division Bench judgment of this Court in the case of Chaturji Amarji & Others vs. Ahmad Rahimbux and others reported in 19 GLR 850.

13.6 She has also relied upon the Division Bench

judgment of this Court in the case of Ashish Jivrajbhai (Supra) wherein in para 25 the Division Bench has applied multiplier of 15 in similar circumstances.

13.7 She has also relied upon the another judgment of this Court in the case of Ahmedabad Municipal Corporation (Supra) particularly para 47 on page 193 where also the Division Bench has applied multiplier of 15.

14. On the other hand, Mr.Sandip Shah, learned advocate for the original claimants has tried to support the award of the tribunal. He submitted that, looking to the certificate produced by the claimants, the claimant has a very bright future, and due to this accident his future life is completely curtailed and for that he should be given proper compensation. He submitted that the tribunal has awarded compensation based on legal preposition and therefore this Court may not interfere with the said findings in this behalf. He has relied upon the oral evidence adduced by the claimants in this behalf and other documentary evidence which we have referred in this behalf.

14.1 Regarding pain, shock and sufferings, he submitted that in view of this accident and the permanent disability which the claimant sustained compound fracture and has lost his left leg and he is walking with the aid of crutches and his left lower limb was crushed and the left limb had to be amputated completely. There was avulsion of left testis completely and of penis partially and there was fracture of left femur with stump projecting outside. In view of the same he will not be able to pass urine properly and therefore his marital prospects also suffered and therefore on account of pain, shock and sufferings the tribunal has rightly awarded Rs.75,000/- as compensation towards pain, shock and sufferings.

14.2 Learned advocate for the claimants has also relied upon the Division Bench judgment of this Court in the case of Chaturji Amarji & Ors. vs. Ahmad Rahimbux & Ors. reported in 19 GLR 850. In para 15 on page 858 the Division Bench has observed as under:

14.3 He has similarly relied upon the Division Bench judgment of this Court in the case of The National Insurance Co. vs. Minor Ramanbhai Fulabhai Bhoi and others reported in 23(2) GLR p.458. In that case also the young boy of 15 years injured on his pelvic region and he was not able to micturate and required to keep a

pouch and a catheter, such catheter has become permanent feature which in future may lead to complications, the claimant would not be enjoy sexual life and in that case the compensation for pain, shock and suffering was awarded Rs.75,000/-. In para 22 the Court has observed as under:

> "There is no doubt that the injuries suffered by the claimant before us are identical and his case cannot in any way be distinguished from the case considered by the Division Bench. As a matter of fact, the appellant before us is hardly 15 years of age and he would have to suffer his misfortune for a long period of time. Mr.Soparkar was right in submitting before us that there was no reason why the claimant should get a lesser amount from the one that was awarded to the claimant by the Division Bench. We accept his submission and accordingly we award to the claimant Rs.75,000/as damages under the head of pain, shock and suffering and loss of amenities and enjoyment of life instead of Rs.45,000/- awarded by the Tribunal."

14.4 Learned advocate for the respondents claimants submitted that in view of the same the amount awarded by the tribunal of Rs.75,000/- is in consonance with the Division Bench judgment of this Court.

14.5 As regards multiplier of 20, he has relied upon the judgment of the Hon'ble Supreme Court in the case of Smt.Hardeep Kaur and another vs. State of Punjab and another reported in AIR 1974 SC 1995. In that case a man was aged 25 years and the tribunal as well as High Court awarded compensation on the basis of 20 years multiplier, the Hon'ble Supreme Court upheld the said award.

14.6 Similarly, he has also relied upon the judgment of the in the case of Madhya Pradesh State Road Transport Corporation vs. Sudhakar and others reported in AIR 1977 SC 1189. In that case the deceased was aged 35 years, the Hon'ble Supreme Court applied multiplier of 20 and awarded compensation.

14.7 Learned advocate for the claimants has relied upon an Unreported Judgment of this Court in First Appeal No.534 of 1980 decided by this Court (Coram: A.M.Ahmadi, J. (as he was then) & R.J.Shah, J.) on 9.9.1982. In that case the Division Bench after considering the aforesaid two Supreme Court judgments in the case of Smt.Hardeep Kaur (supra) and Madhya Pradesh State Road

Transport Corporation (supra) where the appellant was aged 19 years old, applied multiplier to be applicable of 20 and not 15 as found by the tribunal.

14.8 He has also relied upon the judgment of the Hon'ble Apex Court in the case of Pallavan Transport Corporation Ltd. vs. M.Jagannathan reported in 2001 ACJ 5. In that case the injured suffered injury of amputation of left leg above knee. He suffered 85 per cent disability. The High Court awarded Rs.4,50,000/compenstion. The Hon'ble Apex Court considered entire evidence and held that as the High Court has given cogent and convincing reasons the Hon'ble Supreme Court did not interfere with the said order and upheld the order of the High Court.

14.9 In view of the aforesaid circumstances, learned advocate for the respondents has stated that this Court may not interfere with the judgment and award of the tribunal in this behalf.

15. As regards compensation, we have narrated the medical certificate at Exh.25 the injuries suffered by minor Dharmendra. We have also referred to various certificates which shows that the young boy has a very bright and promising career ahead. The fact that his left leg was completely amputed and he has to walk with the help of crutches that was a permanent disability in this behalf. He had to stay in the hospital for about two months and even after discharge of the hospital he has to visit the hospital several times. In view of the severe injury suffered by a young boy of 14 years and the principle laid down therein, in our view the amount of Rs.75,000/- awarded by the tribunal for pain, shock and sufferings is legal and valid.

16. The conclusion which we have arrived at is also supported by the Division Bench judgment of this Court in the case of A.S.Rajara @ Raja Vamshyam (supra). We have also considered the nature of injury which has been referred in that case and we are of the view that the pain shock and suffering and mental and physical agony which the claimant will suffer on account of such a serious wound can be well appreciated and visualised. No amount of money can afford any real compensation for such type of miserable state of health in which the claimant has been left on account of this unfortunate accident. Apart from impotency, he has suffered multiple injuries on vital parts of the body which had required for him prolonged hospitalisation more than once. These grievous laceretion suffered by the claimant have reduced his life

to a shadow of its original self. It is easy to visualise the extent of suffering of a young unmarried man like the claimant who, because of the accident, is now destined to live a solitary forelorn and sordid life, as his future marriage prospects are totally demolished. We can also well realise the social inhibition and stigma which may be suffered by the claimant who will have to drag on the rest of his solitary life being widely known as an impotent person. No amount of monetary compensation can alleviate the mental anguish and physical torture which the claimant is doomed to suffer for the rest of his life on account of the injuries inflicted on him. He has been practically relegated to suffer solitary confinement with a shattered and battered body with most of the future pleasures of life snuffed out. The claimant is left with a totally defunct life which is worse than death and which resembles an empty egg-shell with its contents taken out. Considering the totality of serious impact way of global assessment, we deemed it fit to award him an amount of Rs.75,000/as damages under the head of pain, shock and suffering and loss of amenities and enjoyment of life and accordingly we confirm the findings of the tribunal in this behalf.

Regarding Multiplier:

17. We have considered the age of the injured namely 14 years. We have also considered the excellent and the luminous future prospects of his promising career from the certificates which has been produced by the claimant and his father. We have also considered the medical evidence. We have considered the judgment of the Hon'ble Apex Court in the case of Smt.Hardeep Kaur (supra) and Madhya Pradesh State Road Transport Corporation (supra), and also the Division Bench judgment of this Court in the case of Maheshkumar Pherumal Sukhwani decided on 9.9.1982 in First Appeal No.534 of 1980. In view of the same proper multiplier that is applicable would be 20 and not 15 as contended by the learned advocate for the claimants. In our view the income assessed by the tribunal at Rs.1000/- p.m. towards future economic loss is also legal and proper and same is commensurated with the bright promising career of the injured in this behalf and also fact that injured has ultimately will not be able to get suitable employment due to his injury. In our view minor Dharmendra is too young and his joining Army or Air Force would have depended upon several factors and imponderables, so it cannot be viewed as a certainty. Moreover, minor Dharmendra can still reach upto graduation and as per the present policy of the Government and prevailing awareness in the society about

the plight of handicapped people, Dharmendra may get suitable employment. So the monthly future economic loss fixed by the tribunal at Rs.1000/- is absolutely legal and valid.

17.1 Learned advocate for the appellants has relied upon the judgment of the Hon'ble Supreme Court in the case of U.P.State Road Transport Corporation & Others vs. Trilok Chandra & Ors. reported in 1996(3) GLR 136. In para 15 the Hon'ble Supreme Court has observed as under:

> "We thought it necessary to reiterate the method of working out `just' compensation because, of late, we have noticed from the awards made by Tribunals and Courts that the principle on which the multiplier method was developed has been lost sight of and once again a hybrid method based on the subjectivity of the Tribunal/Court has surfaced, introducing uncertainty and lack of reasonable uniformity in the matter of determination of compensation. It must be realised that the Tribunal/Court has to determine a fair amount of compensation awardable to the victim of an accident which must be proportionate to the injury caused. The two English decisions to which we have referred earlier provide the guidelines for assessing the loss occasioned to the victims. Under the formula advocated by Lord Wright in Davies, the loss has to be ascertained by first determining the monthly income of the deceased, then deducting therefrom the amount spent on the deceased, and thus assessing the loss to the dependents of the deceased. The annual dependency assessed in this manner is then to be multiplied by the use of an appropriate multiplier.

17.1(A) Thereafter in paras 16 and 17 the Hon'ble Supreme Court has observed as under:

> "Para 16 In the method adopted by Viscount Simon in the case of Nance also, first the annual dependency is worked out and then multiplied by the estimated useful life of the deceased. This is generally determined on the basis of longevity. But then, proper discounting on various factors having a bearing on the uncertainties of life, such as, premature death of the deceased or the dependent, remarriage, accelerated payment and increased earning by wise and prudent investments, would become necessary.

It was generally felt that discounting on various imponderables made assessment of compensation rather complicated and cumbersome and very often as a rough and ready measure, one-third to one-half of the dependency was reduced, depending on the life-span taken. That is the reason why Courts in India as well as England preferred the Davies' formula as being simple and more realistic. However, as observed earlier and as pointed out in Susamma Thomas' case, usually English Courts rarely exceed 16 as the multiplier. Courts in India too followed the same pattern till recently when Tribunals/Courts began to use a hybrid method of using Nance's method without making deduction for imponderables."

"Para 17. The situation has now undergone a change with the enactment of the Motor Vehicles Act, 1988, as amended, by Amendment Act LIV of 1994. The most important change introduced by the amendment insofar as it relates to determination of compensation is the insertion of Secs.163A and 163B in Chapter XI entitled `Insurance of Motor Vehicles against Third Party Risks'. Section 165A begins with a non-obstante clause and provides for payment of compensation, as indicated in the Second Schedule, to the legal representatives of the deceased or injured, as the case may be. Now if we turn to the Second Schedule, we find a table fixing the mode of calculation of compensation for third party accident injury claims arising out of fatal accidents. The first column gives the age group of the victims of accident, the second column indicates the multiplier and the subsequent horizontal figures indicate the quantum of compensation in thousand payable to the heirs of the deceased victim. According to this table the multiplier varies from 5 to 18 depending on the age group to which the victim belonged. Thus, under this Schedule the maximum multiplier can be upto 18 and not 16 as was held in Suramma Thomas' case."

18. We have also considered the case of A.S.Rajara (supra) as well as another judgment in the case of Ashish Jivrajbhai (supra). It is no doubt true that in those cases the Division Bench has granted multiplier of 15, however, it appears that the learned advocate has invited

attention to the two judgments of the Hon'ble Supreme Court in the case of Smt.Hardeep Kaur (supra) and Madhya Pradesh State Road Transport Corporation (supra) as well as Division Bench judgment of this Court in the case of Ahmedabad Municipal Corporation (supra). In this case regarding multiplier we have to see life expotency. The father of the claimant has also given evidence about the future prospects of his son and also looking to the age of the injured who is only aged 14 years old at the time of accident.

18.1 We see considerable force in the submission of the learned counsel for the respondents that the tribunal has correctly given multiplier of 20. However, in view of the binding decision of the Hon'ble Supreme Court in the case of U.P.State Road Transport Corporation's case (supra), we are of the view that instead of 20 if multiplier 18 is given the same will be in consonance with the principles laid down by the judgment of the Hon'ble Apex Court in the case of U.P.State Road Transport Corporation (supra). In our view the multiplier of 20 which is given at the relevant time is contrary to and inconsistent with the judgment of the Hon'ble Supreme Court in the U.P.State Road Transport Corporation's case. In view of the same we are applying multiplier of 18 in this behalf.

19. In view of the peculiar facts and circumstances of the case, when the boy who is aged 14 years old had a very bright promising career and due to this accident his entire life is ruined. He has suffered both physical as well aas mental agony in this behalf. In this case, the tribunal has applied 20 years multiplier, as per other judgments cited by the learned advocate for the appellants particularly binding decision of the U.P.State Road Transport Corporation's case (supra), we are of the view that if multiplier 18 is given the same will be the consonance with the judgment of the Hon'ble Supreme Court. However, looking to the peculiar facts and circumstances of the case, we are of the view that we would not interfere with the amount awarded since in our view while the multiplier used is excessive, we are satisfied that a multiplicand was used as the loss of dependency was little low. If we were to correct the multiplicand and use the correct multiplier, the compensation would work out to bear about the same figure. Therefore, while agreeing with the learned advocate for the appellant, we are disinclined to interfere with the figure of compensation. We, therefore, hold that the tribunal fell into an error in the choice of the multiplier and allow the appeal to that

extent but we do not, in the circumstances of the case, interfere with the quantum of compensation.

20. In view of the same, the original claimants are entitled for the following amount of compensation:

Rs.10,000/-	For medicines, medical charges, special diet and transport charges.
Rs.12,000/-	For future transport charges.
Rs.10,000/-	For loss of wages of father of the petitioner and nursing charges.
Rs.75,000/-	For pain, shock and suffering and for loss of amenities and other pleasures of life.
Rs.2,40,000/-	For future economic loss.
Rs.3,47,800/-	in all.

21. So the claimants are entitled to Rs.3,47,800/- compensation from all the opponents jointly and severally. We uphold the judgment and award of the tribunal. We have been informed by Mr.Shah that an amount of Rs.3,25,000/- has been deposited by the insurance company in a nationalised bank in form of fixed deposit. In view of the fact that we are confirming the judgment and award of the tribunal and dismissing the appeal of the insurance company before us the claimants are also entitled to the said amount including the interest if not paid which has been accrued in this behalf. The claimants are entitled to withdraw the amount by encashing Fixed Deposit Receipt. We are dismissing the appeal with costs and the cost is quantified at Rs.10,000/- to be paid by the insurance company. The insurance company will deposit the said amount within six months from today. On depositing the said amount, the claimants are entitled to withdraw the said amount.

(K.R. Vyas, J.)

(K.M. Mehta, J.)

syed/